IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Con.Case(C).No. 1 of 2007(S)

AGAINST THE JUDGEMENT IN WPC.30545/2005 Dated 01/12/2005

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PETITIONER:

K.K. BAHULEYAN,
KARIYIL HOUSE, MANALOOR P.O.,
TRICHUR.

BY ADV. SRI.S.VIJAYAN NAYAR

RESPONDENTS:

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1. SHRI. M.V. RUDRAN, DEPUTY/ASSISTANT
COMMISSIONER OF INCOME TAX,
CIRCLE 2(1) RANGE 2, TRICHUR.

2. SHRI. K.L.MAHESWARI,
COMMISSIONER OF INCOME TAX,
TRICHUR.

BY ADV. SRI.GEORGE K. GEORGE, SC FOR IT

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 08/01/2007, ALONG WITH I.A.357/06 IN W.P(C).30545/05, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

Cont. Case (C).No.1 OF 2007 &
I.A.357/06 IN W.P(C).30545 OF 2005

Dated this the 8th day of January, 2007

JUDGMENT

1. The petitioner, an assessee on the rolls of the first respondent, filed the writ petition stating that the documents seized by the authorities following a search in his premises are illegally detained leading to many of his claims before the civil court against his customers getting time barred. He moved the writ petition after filing Ext.P5 representation requesting release of certain documents. By the time the writ petition came up for consideration, it was noticed that proceedings between the assessee and the department had reached the Tribunal and the assessee may require the documents for his business activities, including the institution of litigations arising out of business transactions. Under such circumstances, though recording the statement of the counsel for the department, it was ordered that the books of accounts and other documets seized from the petitioner shall be returned to him after the department retains photostat copies,

which will be countersigned by the petitioner and on his executing due receipts for the return of the documents.

2. The department has filed I.A.357/06 seeking recalling of the judgment. This application is on the premise that following the judgment dated 1.12.2005, the department had released the documents covered by Ext.P5 representation and the assertion of the counsel on behalf of the department was only to the extent of the documents covered by Ext.P5 and not in relation to the other documents which is the subject matter of the surrender and seizure. But the fact remains that while the department would have to fall back on necessary statutory power for retaining the documents, it will be the requirement of the assessee, a business man, subject of course to the law binding him to make available those documents before the Tribunal or any other statutory or any authority for the purpose of statutory proceedings, to have custody of the documents relating to his business.

3. The contempt case arose in the context of the non returning of the documents other than those listed in Ext.P5. Having regard to the fact that the request to recall the judgment was filed and the departmental officials were acting bonafide on the basis of their stand in so far as the documents mentioned in Ext.P5 is concerned, I do not find any ground to initiate action under the Contempt of Courts Act.

4. In the aforesaid circumstances, the contempt case is closed and I.A.357/06 is disposed of clarifying that the documents still retained by the department will also be released to the petitioner on his countersigning photostat copies of the documents to be retained by the department and he shall produce the said original documents before the Tribunal or any other authority if and when called for. The petitioner shall also ensure safe custody of the said documents, unless otherwise conceded to by the department, on his request. It is

also recorded that the petitioner, through his learned counsel, concedes to the department and statutory authorities using the photostat copies counter signed as aforesaid, in lieu of the originals for all departmental and other statutory proceedings.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.